



House of Representatives

General Assembly

File No. 413

February Session, 2010

Substitute House Bill No. 5271

House of Representatives, April 8, 2010

The Committee on Human Services reported through REP. WALKER of the 93rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING ACCESS TO RECORDS OF THE DEPARTMENT OF CHILDREN AND FAMILIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 17a-28 of the 2010 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective October 1, 2010*):

4 (a) As used in this section:

5 (1) "Person" means (A) any individual named in a record,
6 maintained by the department, who (i) is presently or at any prior time
7 was a ward of or committed to the commissioner for any reason; (ii)
8 otherwise received services, voluntarily or involuntarily, from the
9 department; or (iii) is presently or was at any prior time the subject of
10 an investigation by the department; (B) [the parent of a person, as
11 defined] a parent whose parental rights have not been terminated or
12 current guardian of an individual described in subparagraph (A) of
13 this subdivision, if such [person] individual is a minor; or (C) the

14 authorized representative of a person, as defined in subparagraph (A)
15 of this subdivision, if such person is deceased;

16 (2) "Attorney" means the licensed attorney authorized to assert the
17 confidentiality of or right of access to records of a person;

18 (3) "Authorized representative" means a parent, guardian, guardian
19 ad litem, attorney, conservator or other individual authorized to assert
20 the confidentiality of or right of access to records of a person;

21 (4) "Consent" means permission given in writing by a person, [his]
22 such person's attorney or [his] authorized representative to disclose
23 specified information, within a limited time period, regarding the
24 person to specifically identified individuals or entities;

25 (5) "Records" means information created or obtained in connection
26 with the department's child protection activities or other activities
27 related to a child while in the care or custody of the department,
28 including information in the registry of reports to be maintained by the
29 commissioner pursuant to section 17a-101k, as amended by this act;
30 [provided records which are not created by the department are not
31 subject to disclosure, except as provided pursuant to subsection (f), (l)
32 or (n) of this section;]

33 (6) "Disclose" means (A) to provide an oral summary of records
34 maintained by the department to an individual, agency, corporation or
35 organization, or (B) to allow an individual, agency, corporation or
36 organization to review or obtain copies of such records in whole, part
37 or summary form;

38 (7) "Near fatality" means an act, as certified by a physician, that
39 places a child in serious or critical condition.

40 (b) Notwithstanding the provisions of section 1-210, 1-211 or 1-213,
41 records maintained by the department shall be confidential and shall
42 not be disclosed, unless the department receives written consent from
43 the person or as provided in this section. Any unauthorized disclosure
44 shall be punishable by a fine of not more than one thousand dollars or

45 imprisonment for not more than one year, or both. Any employee of
46 the department who in the ordinary course of such person's
47 employment has reasonable cause to suspect or believe that another
48 employee has engaged in the unauthorized disclosure of records shall
49 report in writing such unauthorized disclosure of records to the
50 commissioner. The report shall include the name of the person
51 disclosing the information and the nature of the information disclosed
52 and to whom it was disclosed, if known.

53 [(c) When information concerning an incident of abuse or neglect
54 has been made public or when the commissioner reasonably believes
55 publication of such information is likely, the commissioner or the
56 commissioner's designee may disclose, with respect to an investigation
57 of such abuse or neglect: (1) Whether the department has received a
58 report in accordance with sections 17a-101a to 17a-101c, inclusive, or
59 section 17a-103, and (2) in general terms, any action taken by the
60 department, provided (A) the names or other individually identifiable
61 information of the minor victim or other family member is not
62 disclosed, and (B) the name or other individually identifiable
63 information of the person suspected to be responsible for the abuse or
64 neglect is not disclosed unless the person has been arrested for a crime
65 due to such abuse or neglect.

66 (d) The commissioner shall make available to the public, without
67 the consent of the person, information in general terms or findings
68 concerning an incident of abuse or neglect which resulted in a child
69 fatality or near fatality of a child, provided disclosure of such
70 information or findings does not jeopardize a pending investigation.]

71 (c) Records that (1) contain privileged communications, or (2) are
72 confidential pursuant to any federal law or regulation shall not be
73 disclosed except as authorized by law.

74 (d) Any information disclosed from a person's record shall not be
75 further disclosed to another individual or entity without the written
76 consent of the person, except pursuant to (1) section 19a-80, or (2) the
77 order of a court of competent jurisdiction.

78 (e) The commissioner shall, upon written request, disclose the
79 following information concerning agencies licensed by the Department
80 of Children and Families, except foster care parents, relatives of the
81 child who are certified to provide foster care or prospective adoptive
82 families: (1) The name of the licensee; (2) the date the original license
83 was issued; (3) the current status of the license; (4) whether an agency
84 investigation or review is pending or has been completed; and (5) any
85 licensing action taken by the department at any time during the period
86 such license was issued and the reason for such action, provided
87 disclosure of such information will not jeopardize a pending
88 investigation.

89 [(f) The commissioner or the commissioner's designee shall, upon
90 request, promptly provide copies of records, without the consent of a
91 person, to (1) a law enforcement agency, (2) the Chief State's Attorney,
92 or the Chief State's Attorney's designee, or a state's attorney for the
93 judicial district in which the child resides or in which the alleged abuse
94 or neglect occurred, or the state's attorney's designee, for purposes of
95 investigating or prosecuting an allegation of child abuse or neglect, (3)
96 the attorney appointed to represent a child in any court in litigation
97 affecting the best interests of the child, (4) a guardian ad litem
98 appointed to represent a child in any court in litigation affecting the
99 best interests of the child, (5) the Department of Public Health, in
100 connection with: (A) Licensure of any person to care for children for
101 the purposes of determining the suitability of such person for
102 licensure, subject to the provisions of sections 17a-101g and 17a-101k,
103 or (B) an investigation conducted pursuant to section 19a-80f, (6) any
104 state agency which licenses such person to educate or care for children
105 pursuant to section 10-145b or 17a-101j, subject to the provisions of
106 sections 17a-101g and 17a-101k concerning nondisclosure of findings
107 of responsibility for abuse and neglect, (7) the Governor, when
108 requested in writing, in the course of the Governor's official functions
109 or the Legislative Program Review and Investigations Committee, the
110 joint standing committee of the General Assembly having cognizance
111 of matters relating to the judiciary and the select committee of the
112 General Assembly having cognizance of matters relating to children

113 when requested in the course of said committees' official functions in
114 writing, and upon a majority vote of said committee, provided no
115 names or other identifying information shall be disclosed unless it is
116 essential to the legislative or gubernatorial purpose, (8) a local or
117 regional board of education, provided the records are limited to
118 educational records created or obtained by the state or Connecticut-
119 Unified School District #2, established pursuant to section 17a-37, (9) a
120 party in a custody proceeding under section 17a-112 or 46b-129, in the
121 Superior Court where such records concern a child who is the subject
122 of the proceeding or the parent of such child, (10) the Chief Child
123 Protection Attorney, or his or her designee, for purposes of ensuring
124 competent representation by the attorneys whom the Chief Child
125 Protection Attorney contracts with to provide legal and guardian ad
126 litem services to the subjects of such records and to ensure accurate
127 payments for services rendered by such contract attorneys, and (11)
128 the Department of Motor Vehicles, for purposes of checking the state's
129 child abuse and neglect registry pursuant to subsection (e) of section
130 14-44. A disclosure under this section shall be made of any part of a
131 record, whether or not created by the department, provided no
132 confidential record of the Superior Court shall be disclosed other than
133 the petition and any affidavits filed therewith in the superior court for
134 juvenile matters, except upon an order of a judge of the Superior Court
135 for good cause shown. The commissioner shall also disclose the name
136 of any individual who cooperates with an investigation of a report of
137 child abuse or neglect to such law enforcement agency or state's
138 attorney for purposes of investigating or prosecuting an allegation of
139 child abuse or neglect. The commissioner or the commissioner's
140 designee shall, upon request, subject to the provisions of sections 17a-
141 101g and 17a-101k, promptly provide copies of records, without the
142 consent of the person, to (A) the Department of Public Health for the
143 purpose of determining the suitability of a person to care for children
144 in a facility licensed under sections 19a-77 to 19a-80, inclusive, 19a-82
145 to 19a-87, inclusive, and 19a-87b, and (B) the Department of Social
146 Services for determining the suitability of a person for any payment
147 from the department for providing child care.

148 (g) When the commissioner or his designee determines it to be in a
149 person's best interest, the commissioner or his designee may disclose
150 records, whether or not created by the department and not otherwise
151 privileged or confidential communications under state or federal law,
152 without the consent of a person to:

153 (1) Multidisciplinary teams which are formed to assist the
154 department in investigation, evaluation or treatment of child abuse
155 and neglect cases or a multidisciplinary provider of professional
156 treatment services under contract with the department for a child
157 referred to the provider;

158 (2) Any agency in another state which is responsible for
159 investigating or protecting against child abuse or neglect for the
160 purpose of investigating a child abuse case;

161 (3) An individual, including a physician, authorized pursuant to
162 section 17a-101f to place a child in protective custody if such
163 individual has before him a child whom he reasonably suspects may
164 be a victim of abuse or neglect and such individual requires the
165 information in a record in order to determine whether to place the
166 child in protective custody;

167 (4) An individual or public or private agency responsible for a
168 person's care or custody and authorized by the department to
169 diagnose, care for, treat or supervise a child who is the subject of a
170 record of child abuse or neglect or a public or private agency
171 responsible for a person's education for a purpose related to the
172 individual's or agency's responsibilities;

173 (5) The Attorney General or any assistant attorney general
174 providing legal counsel for the department;

175 (6) Individuals or public or private agencies engaged in medical,
176 psychological or psychiatric diagnosis or treatment of a person
177 perpetrating the abuse or who is unwilling or unable to protect the
178 child from abuse or neglect when the commissioner or his designee

179 determines that the disclosure is needed to accomplish the objectives
180 of diagnosis or treatment;

181 (7) A person who reports child abuse pursuant to sections 17a-101a
182 to 17a-101c, inclusive, and section 17a-103, who made a report of abuse
183 involving the subject child, provided the information disclosed is
184 limited to (A) the status of the investigation and (B) in general terms,
185 any action taken by the department;

186 (8) An individual conducting bona fide research, provided no
187 information identifying the subjects of records shall be disclosed
188 unless (A) such information is essential to the purpose of the research;
189 (B) each person identified in a record or his authorized representative
190 has authorized such disclosure in writing; and (C) the department has
191 given written approval;

192 (9) The Auditors of Public Accounts or their representative,
193 provided no information identifying the subjects of the records shall be
194 disclosed unless such information is essential to an audit conducted
195 pursuant to section 2-90;

196 (10) The Department of Social Services, provided the information
197 disclosed is necessary to promote the health, safety and welfare of the
198 child;

199 (11) A judge of the Superior Court for purposes of determining the
200 appropriate disposition of a child convicted as delinquent or a child
201 who is a member of a family with service needs;

202 (12) The superintendents, or their designees, of state-operated
203 facilities within the department; and

204 (13) The Department of Developmental Services, to allow said
205 department to determine eligibility, facilitate enrollment and plan for
206 the provision of services to a child, who is a client of said department
207 but who is not yet participating in said department's voluntary
208 services program. Records provided pursuant to this subdivision shall
209 be limited to a written summary of any investigation conducted by the

210 Department of Children and Families pursuant to section 17a-101g. At
211 the time that a parent or guardian completes an application for
212 enrollment of a child in the Department of Developmental Services
213 voluntary services program, said department shall notify such parent
214 or guardian that records specified in this subdivision may be provided
215 by the Department of Children and Families to the Department of
216 Developmental Services without the consent of such parent or
217 guardian.

218 (h) The commissioner or his designee may disclose the name,
219 address and fees for services to a person, to individuals or agencies
220 involved in the collection of fees for such services, except as provided
221 in section 17b-225. In cases where a dispute arises over such fees or
222 claims or where additional information is needed to substantiate the
223 fee or claim, such disclosure of further information shall be limited to
224 the following: (1) That the person was in fact committed to or
225 otherwise served by the department; (2) dates and duration of service;
226 and (3) a general description of the service, which shall include
227 evidence that a service or treatment plan exists and has been carried
228 out and evidence to substantiate the necessity for admission and
229 length of stay in any institution or facility.

230 (i) Notwithstanding the provisions of subsections (f) and (l) of this
231 section, the name of an individual reporting child abuse or neglect
232 shall not be disclosed without his written consent except to (1) an
233 employee of the department responsible for child protective services or
234 the abuse registry; (2) a law enforcement officer; (3) an appropriate
235 state's attorney; (4) an appropriate assistant attorney general; (5) a
236 judge of the Superior Court and all necessary parties in a court
237 proceeding pursuant to section 46b-129, or a criminal prosecution
238 involving child abuse or neglect; or (6) a state child care licensing
239 agency, executive director of any institution, school or facility or
240 superintendent of schools pursuant to section 17a-101i.

241 (j) Notwithstanding the provisions of subsection (g) of this section,
242 the name of any individual who cooperates with an investigation of a

243 report of child abuse or neglect shall be kept confidential upon request
244 or upon determination by the department that disclosure of such
245 information may be detrimental to the safety or interests of the
246 individual, except the name of any such individual shall be disclosed
247 to the persons listed in subsection (i) of this section.

248 (k) Notwithstanding the confidentiality provisions of this section,
249 the commissioner, upon request of an employee, shall disclose such
250 records to such employee or his authorized representative which
251 would be applicable and necessary for the purposes of an employee
252 disciplinary hearing or appeal from a decision after such hearing.

253 (l) Information disclosed from a person's record shall not be
254 disclosed further without the written consent of the person, except if
255 disclosed (1) pursuant to the provisions of section 19a-80f, or (2) to a
256 party or his counsel pursuant to an order of a court in which a criminal
257 prosecution or an abuse, neglect, commitment or termination
258 proceeding against the party is pending. A state's attorney shall
259 disclose to the defendant or his counsel in a criminal prosecution,
260 without the necessity of a court order, exculpatory information and
261 material contained in such record and may disclose, without a court
262 order, information and material contained in such record which could
263 be the subject of a disclosure order. All written records disclosed to
264 another individual or agency shall bear a stamp requiring
265 confidentiality in accordance with the provisions of this section. Such
266 material shall not be disclosed to anyone without written consent of
267 the person or as provided by this section. A copy of the consent form
268 specifying to whom and for what specific use the record is disclosed or
269 a statement setting forth any other statutory authorization for
270 disclosure and the limitations imposed thereon shall accompany such
271 record. In cases where the disclosure is made orally, the individual
272 disclosing the information shall inform the recipient that such
273 information is governed by the provisions of this section.

274 (m) In addition to the right of access provided in section 1-210, any
275 person, regardless of age, his authorized representative or attorney

276 shall have the right of access to any records made, maintained or kept
277 on file by the department, whether or not such records are required by
278 any law or by any rule or regulation, when those records pertain to or
279 contain information or materials concerning the person seeking access
280 thereto, including but not limited to records concerning investigations,
281 reports, or medical, psychological or psychiatric examinations of the
282 person seeking access thereto, provided that (1) information
283 identifying an individual who reported abuse or neglect of a person,
284 including any tape recording of an oral report pursuant to section 17a-
285 103, shall not be released unless, upon application to the Superior
286 Court by such person and served on the Commissioner of Children
287 and Families, a judge determines, after in camera inspection of
288 relevant records and a hearing, that there is reasonable cause to believe
289 the reporter knowingly made a false report or that other interests of
290 justice require such release; and (2) if the commissioner determines
291 that it would be contrary to the best interests of the person or his
292 authorized representative or attorney to review the records, he may
293 refuse access by issuing to such person or representative or attorney a
294 written statement setting forth the reasons for such refusal, and advise
295 the person, his authorized representative or attorney of the right to
296 seek judicial relief. When any person, attorney or authorized
297 representative, having obtained access to any record, believes there are
298 factually inaccurate entries or materials contained therein, he shall
299 have the unqualified right to add a statement to the record setting
300 forth what he believes to be an accurate statement of those facts, and
301 said statement shall become a permanent part of said record.

302 (n) (1) Any person, attorney or authorized representative aggrieved
303 by a violation of subsection (b), (f), (g), (h), (i), (j) or (l) of this section or
304 of subsection (m) of this section, except subdivision (2) of said
305 subsection (m), may seek judicial relief in the same manner as
306 provided in section 52-146j; (2) any person, attorney or authorized
307 representative denied access to records by the commissioner under
308 subdivision (2) of subsection (m) of this section may petition the
309 superior court for the venue district provided in section 46b-142 in
310 which the person resides for an order requiring the commissioner to

311 permit access to those records, and the court after hearing, and an in
312 camera review of the records in question, shall issue such an order
313 unless it determines that to permit such access would be contrary to
314 the best interests of the person or authorized representative.

315 (o) The commissioner shall promulgate regulations pursuant to
316 chapter 54, within one year of October 1, 1996, to establish procedures
317 for access to and disclosure of records consistent with the provisions of
318 this section.]

319 (f) The name of any individual who reports suspected abuse or
320 neglect of a child or youth or cooperates with an investigation of child
321 abuse or neglect shall be kept confidential upon request or upon
322 determination by the department that disclosure of such information
323 may be detrimental to the safety or interests of the individual, except
324 the name of any such individual shall be disclosed pursuant to
325 subparagraph (B) of subdivision (1) of subsection (g) of this section
326 and to (1) an employee of the department for reasons reasonably
327 related to the business of the department; (2) a law enforcement officer
328 for purposes of investigating abuse or neglect of a child or youth; (3) a
329 state's attorney for purposes of investigating or prosecuting abuse or
330 neglect of a child or youth; (4) an assistant attorney general or other
331 legal counsel representing the department; (5) a judge of the Superior
332 Court and all necessary parties in a court proceeding pursuant to
333 section 17a-112 or 46b-129, or a criminal prosecution involving child
334 abuse or neglect; (6) a state child care licensing agency; or (7) the
335 executive director of any institution, school or facility or
336 superintendent of schools pursuant to section 17a-101i.

337 (g) The department shall disclose records, without the consent of the
338 person who is the subject of the record, to:

339 (1) The person named in the record or such person's authorized
340 representative, provided such disclosure shall be limited to (A) such
341 person's biological or adoptive minor child, if such person's parental
342 rights to such child have not been terminated; and (B) information
343 identifying an individual who reported abuse or neglect of the person,

344 if a court determines that there is reasonable cause to believe the
345 reporter knowingly made a false report or that the interests of justice
346 require disclosure;

347 (2) An employee of the department for any purpose reasonably
348 related to the business of the department;

349 (3) A guardian ad litem or attorney appointed to represent a child or
350 youth in litigation affecting the best interests of the child or youth;

351 (4) The Attorney General, any assistant attorney general or any
352 other legal counsel retained to represent the department during the
353 course of a legal proceeding involving the department or an individual
354 employee of the department;

355 (5) The Child Advocate or the Child Advocate's designee;

356 (6) The Chief Child Protection Attorney or the Chief Child
357 Protection Attorney's designee;

358 (7) The Chief State's Attorney or the Chief State's Attorney's
359 designee for purposes of investigating or prosecuting an allegation of
360 child abuse or neglect, provided such prosecuting authority shall have
361 access to such records of a delinquency defendant, who is not being
362 charged with an offense related to child abuse, only while the case is
363 being prosecuted and after obtaining a release;

364 (8) A state or federal law enforcement officer for purposes of
365 investigating an allegation of child abuse or neglect;

366 (9) Any foster or prospective adoptive parent, if the records pertain
367 to a child or youth currently placed with the foster or prospective
368 adoptive parent, or a child or youth being considered for placement
369 with the foster or prospective adoptive parent and the records are
370 necessary to address the social, medical, psychological or educational
371 needs of the child or youth, provided no information identifying a
372 biological parent is disclosed without the permission of such biological
373 parent;

374 (10) The Governor, when requested in writing in the course of the
375 Governor's official functions, the Legislative Program Review and
376 Investigations Committee, the joint standing committees of the General
377 Assembly having cognizance of matters relating to human services and
378 the judiciary and the select committee of the General Assembly having
379 cognizance of matters relating to children, when requested in writing
380 in the course of said committees' official functions, and upon a
381 majority vote of said committees, provided no names or other
382 identifying information is disclosed unless it is essential to the
383 gubernatorial or legislative purpose;

384 (11) The Department of Public Health, subject to the provisions of
385 section 17a-101g and section 17a-101k, as amended by this act, for the
386 purpose of (A) determining the suitability of a person to care for
387 children in a facility licensed pursuant to section 19a-77, 19a-80 or 19a-
388 87b; (B) determining the suitability of such person for licensure; or (C)
389 an investigation conducted pursuant to section 19a-80f;

390 (12) The Department of Developmental Services, to allow said
391 department to determine eligibility, facilitate enrollment and plan for
392 the provision of services to a child, who is a client of said department
393 and who is not participating in said department's voluntary services
394 program or is enrolled in said department's voluntary services
395 program, provided records disclosed pursuant to this subdivision shall
396 be limited to a written summary of any investigation conducted by the
397 Department of Children and Families pursuant to section 17a-101g and
398 to information contained in the abuse and neglect registry pursuant to
399 section 17a-101k, as amended by this act. At the time that a parent or
400 guardian completes an application for enrollment of a child in the
401 Department of Developmental Services voluntary services program or
402 at the time that the child's annual individual plan is updated, said
403 department shall notify the child's parent or guardian that records
404 described in this subdivision may be disclosed by the Department of
405 Children and Families to the Department of Developmental Services
406 without the consent of the child's parent or guardian;

407 (13) A state agency that licenses or certifies a person to educate or
408 care for children or youth, subject to the provisions of section 17a-101g
409 and section 17a-101k, as amended by this act, concerning
410 nondisclosure of findings of responsibility for abuse and neglect;

411 (14) A judge of the Probate Court where the Probate Court has
412 requested an investigative report prepared by the Department of
413 Children and Families for the purpose of determining custody,
414 provided the information disclosed is limited to records necessary to
415 the preparation of the investigative report;

416 (15) A judge of the Superior Court for purposes of determining the
417 appropriate disposition of a child convicted as delinquent or a child
418 who is a member of a family with service needs, or a judge of the
419 Superior Court in a criminal prosecution for purposes of in-camera
420 inspection whenever (A) the court has ordered that the record be
421 provided to the court; or (B) a party to the proceeding has issued a
422 subpoena for the record;

423 (16) The Auditors of Public Accounts, or their representative,
424 provided no information identifying the subject of the record is
425 disclosed unless such information is essential to an audit conducted
426 pursuant to section 2-90;

427 (17) A local or regional board of education, provided the records are
428 limited to educational records created or obtained by the state or
429 Connecticut Unified School District #2, established pursuant to section
430 17a-37;

431 (18) The Department of Motor Vehicles for the purpose of criminal
432 history records checks pursuant to subsection (e) of section 14-44,
433 provided information disclosed pursuant to this subdivision shall be
434 limited to information obtained in an investigation conducted
435 pursuant to section 17a-101g and information contained in the abuse
436 and neglect registry pursuant to section 17a-101k, as amended by this
437 act; and

438 (19) The Department of Mental Health and Addiction Services for
439 the purpose of treatment planning for young adults who have
440 transitioned from the care of the Department of Children and Families,
441 provided information disclosed pursuant to this subdivision shall be
442 limited to information obtained in an investigation conducted
443 pursuant to section 17a-101g and information contained in the abuse
444 and neglect registry pursuant to section 17a-101k, as amended by this
445 act.

446 (h) The department may, subject to subsection (c) of this section,
447 disclose records without the consent of the person who is the subject of
448 the record, to:

449 (1) An employee or former employee of the department or such
450 employee or former employee's authorized representative for purposes
451 of participating in any court, administrative or disciplinary
452 proceeding, provided such disclosure shall be limited to records that
453 are necessary to the proceeding, as determined by the department;

454 (2) Multidisciplinary teams, as described in section 17a-106a;

455 (3) A provider of professional services for a child, youth or parent
456 referred to such provider, provided such disclosure is limited to
457 information necessary to provide services to the child, youth or parent;

458 (4) An individual or agency under contract with the department for
459 the purposes of identifying and assessing a potential foster or adoptive
460 home for a child or youth, provided no information identifying a
461 biological parent of a child or youth is disclosed without the
462 permission of such biological parent;

463 (5) The Department of Social Services, subject to the provisions of
464 sections 17a-101g and 17a-101k, as amended by this act, for the
465 purpose of (A) determining the suitability of a person for payment
466 from the Department of Social Services for providing child care; or (B)
467 promoting the health, safety and welfare of the child or youth;

468 (6) A physician examining a child with respect to whom abuse or

469 neglect is suspected and who is authorized pursuant to section 17a-
470 101f to keep the child in the custody of a hospital when such physician
471 requires the information in a record of the department to determine
472 whether to keep the child or youth in protective custody;

473 (7) An individual who reports child abuse or neglect pursuant to
474 sections 17a-101a to 17a-101c, inclusive, and 17a-103, who made a
475 report of abuse or neglect, provided the information disclosed is
476 limited to (A) the status of the investigation conducted pursuant to
477 section 17a-101g resulting from the individual's report; (B) in general
478 terms, the action taken by the department as a result of such
479 investigation; and (C) information contained in the abuse and neglect
480 registry pursuant to section 17a-101k, as amended by this act;

481 (8) An individual or organization engaged in the business of
482 medical, psychological or psychiatric diagnosis and treatment and who
483 is treating an individual who has perpetrated abuse or neglect, as
484 determined in an investigation conducted pursuant to section 17a-
485 101g, or who is unwilling or unable to protect a child or youth from
486 abuse or neglect, as determined in an investigation conducted
487 pursuant to section 17a-101g, when the commissioner, or the
488 commissioner's designee, determines that the disclosure is necessary to
489 accomplish the objectives of diagnosis or treatment, provided the
490 information disclosed is limited to information contained in the abuse
491 and neglect registry pursuant to section 17a-101k, as amended by this
492 act;

493 (9) A court or public agency in another state or a federally
494 recognized Indian tribe, that is responsible for investigating child
495 abuse or neglect, preventing child abuse and neglect or providing
496 services to families at risk for abuse or neglect, for the purpose of such
497 investigation, prevention or providing services to such families,
498 provided the information disclosed is limited to information obtained
499 in an investigation conducted pursuant to section 17a-101g or
500 contained in the abuse and neglect registry pursuant to section 17a-
501 101k, as amended by this act;

502 (10) An individual conducting bona fide research, provided no
503 information identifying the subject of the record is disclosed unless (A)
504 such information is essential to the purpose of the research; and (B) the
505 department has given written approval for the use of such
506 information;

507 (11) An individual or agency involved in the collection of fees for
508 services, provided such information is limited to the name and address
509 of the person who received the services and the fees for services,
510 except as provided in section 17b-225. In cases where a dispute arises
511 over such fees or claims or where additional information is needed to
512 substantiate the fee or claim, the Department of Children and Families
513 may disclose the following: (A) That the person was, in fact, provided
514 services by the department; (B) the dates and duration of service; and
515 (C) a general description of the service, including evidence that a
516 service or treatment plan exists and has been carried out and evidence
517 to substantiate the necessity for admission and length of stay in an
518 institution or facility;

519 (12) A law enforcement officer or state's attorney if there is
520 reasonable cause to believe that a child or youth is being abused or
521 neglected or at risk of being abused or neglected as a result of any
522 suspected criminal activity by any person;

523 (13) Any individual interviewed as part of an investigation
524 conducted pursuant to section 17a-101g, who is not otherwise entitled
525 to such information, provided such disclosure of information is limited
526 to: (A) The general nature of the allegations contained in the reports;
527 (B) the identity of the child or youth alleged to have been abused or
528 neglected; (C) the identity of the alleged perpetrator; (D) information
529 contained in the abuse and neglect registry pursuant to section 17a-
530 101k, as amended by this act; and (E) information necessary to
531 effectively conduct the investigation;

532 (14) Any individual, when information concerning an incident of
533 abuse or neglect has been made public or when the commissioner
534 reasonably believes publication of such information is likely, provided

535 (A) such disclosure is limited to: (i) Whether the department has
536 received a report in accordance with sections 17a-101a to 17a-101c,
537 inclusive, or section 17a-103, and (ii) in general terms, any action taken
538 by the department; and (B) the following information is not disclosed:
539 (i) The names or other individually identifiable information of the
540 minor victim or other family member, and (ii) the name or other
541 individually identifiable information of the person suspected to be
542 responsible for the abuse or neglect, unless such person has been
543 arrested for a crime due to such abuse or neglect;

544 (15) Any individual for the purpose of locating a missing parent,
545 child or youth, provided such disclosure is limited to information that
546 assists in locating such missing parent, child or youth;

547 (16) Any individual, when the information or findings concern an
548 incident of abuse or neglect that resulted in a child or youth fatality or
549 near fatality of a child or youth, provided disclosure of such
550 information or findings is in general terms and does not jeopardize a
551 pending investigation;

552 (17) A court of competent jurisdiction whenever an employee of the
553 department is subpoenaed and ordered to testify about such records;

554 (18) An individual who is not employed by the department who
555 arranges, performs or assists in performing functions or activities on
556 behalf of the department, including, but not limited to, data analysis,
557 processing or administration, utilization reviews, quality assurance,
558 practice management, consultation, data aggregation and accreditation
559 services, provided information disclosed pursuant to this subdivision
560 shall be limited to information obtained in an investigation conducted
561 pursuant to section 17a-101g and information contained in the abuse
562 and neglect registry pursuant to section 17a-101k, as amended by this
563 act;

564 (i) Notwithstanding the provisions of subsections (e) to (h),
565 inclusive, of this section, the department may refuse to disclose records
566 to any individual, provided the department gives such individual

567 notice (1) that records are being withheld; (2) of the general nature of
568 the records being withheld; (3) of the department's reason for refusing
569 to disclose the records; and (4) of the individual's right to judicial relief
570 pursuant to subsection (j) of this section.

571 (j) Any person (1) aggrieved by a violation of subsection (b) or (d),
572 subsections (f) to (h), inclusive, or subsection (l) of this section, or the
573 person's authorized representative, may seek judicial relief in the
574 manner prescribed in section 52-146j; or (2) denied access to records by
575 the department under subsection (i) of this section, or the person's
576 authorized representative, may petition the superior court for juvenile
577 matters for the venue district, established pursuant to section 46b-142,
578 in which the person resides for an order requiring the commissioner to
579 permit access to the records, and the court, after a hearing and an in-
580 camera review of the records in question, shall issue such order unless
581 it determines that permitting such disclosure of all or any portion of
582 the record (A) would be contrary to the best interests of the person or
583 the person's authorized representative; (B) could reasonably result in
584 the risk of harm to any person; or (C) would contravene the public
585 policy of the state.

586 (k) A party to a civil proceeding may petition the superior court for
587 juvenile matters for the venue district, established pursuant to section
588 46b-142, in which the party resides for an order authorizing disclosure
589 of the record of another party to the civil proceeding, provided the
590 court, after an in-camera inspection, finds the records are material and
591 relevant to those proceedings and that good cause exists to disclose
592 such records. For purposes of this subsection, good cause exists, but is
593 not limited to, situations in which there are no other available means of
594 obtaining the information sought in such record by the party seeking
595 such record.

596 (l) All written records disclosed to another individual or agency
597 shall bear a stamp requiring confidentiality in accordance with the
598 provisions of this section. Such material shall not be disclosed to
599 anyone without the written consent of the person or as provided by

600 this section. A copy of the consent form, specifying to whom and for
 601 what specific use the record is disclosed or a statement setting forth
 602 any other statutory authorization for disclosure and the limitations
 603 imposed on such disclosure, shall accompany the record. In cases
 604 where the disclosure is made orally, the individual disclosing the
 605 information shall inform the recipient that such information is
 606 governed by the provisions of this section.

607 (m) Whenever any person, attorney or authorized representative,
 608 having obtained access to any record, believes there are factually
 609 inaccurate entries or materials contained in such record, such person
 610 may add a statement to the record setting forth what such person
 611 believes to be an accurate statement of those facts and such statement
 612 shall become a permanent part of the record.

613 Sec. 2. Subdivision (1) of subsection (c) of section 17a-101k of the
 614 general statutes is repealed and the following is substituted in lieu
 615 thereof (*Effective October 1, 2010*):

616 (c) (1) Following a request for appeal, the commissioner or the
 617 commissioner's designee shall conduct an internal review of the
 618 recommended finding to be completed no later than thirty days after
 619 the request for appeal is received by the department. The
 620 commissioner or the commissioner's designee shall review all relevant
 621 information relating to the recommended finding, to determine
 622 whether the recommended finding is factually or legally deficient and
 623 ought to be reversed. Prior to the review, the commissioner shall
 624 provide the individual access to all relevant documents in the
 625 possession of the commissioner regarding the finding of responsibility
 626 for abuse or neglect of a child, as provided in [subsection (m) of]
 627 section 17a-28, as amended by this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2010</i>	17a-28
Sec. 2	<i>October 1, 2010</i>	17a-101k(c)(1)

HS *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill makes various changes to statute concerning the disclosure of records by the Department of Children and Families that result in no fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 5271*****AN ACT CONCERNING ACCESS TO RECORDS OF THE DEPARTMENT OF CHILDREN AND FAMILIES.*****SUMMARY:**

This bill expands the parties to whom the Department of Children and Families (DCF) must disclose its otherwise confidential records without the consent of the person named in the record. It also expands the list of parties to whom DCF may, at its discretion, disclose records without consent. It makes some of the disclosures that are mandatory under current law, discretionary and others that are currently discretionary, mandatory.

The bill eliminates restrictions on DCF's ability to refuse to disclose such records, and it prohibits disclosure of records that are (1) privileged (e.g., doctor-patient or attorney-client communication) or (2) confidential under federal law or regulation unless authorized by law.

By law, the penalty for unauthorized disclosure of DCF records is a fine of up to \$1,000, imprisonment for up to one year, or both.

EFFECTIVE DATE: October 1, 2010

DCF RECORD DISCLOSURE***Records that Can be Disclosed; People who Can Consent to Disclosure***

By law, records DCF maintains are confidential and cannot be disclosed unless (1) DCF receives written consent from the person named in the record or (2) the law otherwise requires or allows disclosure. Under current law and the bill, a "record" is information DCF created or obtained as a result of its child protection activities or other activities related to a child (a person under age 16) who is or was

in its care or custody. Records include information in DCF's child abuse registry and information obtained while a child received services voluntarily or involuntarily from the department. The bill eliminates a partial restriction on DCF's disclosing records that it did not create.

Under current law, consent to disclosure is required from the "person" named in a DCF record who (1) is, or was, committed to DCF; (2) received services voluntary or involuntarily from DCF; (3) is, or was, the subject of a child abuse or neglect investigation; or (4) is the parent of someone currently or previously committed to DCF, if the person is still a minor. The "authorized representative" of a deceased person who was committed to DCF can consent on that person's behalf. Authorized representatives can also receive certain disclosed records.

The bill eliminates the ability of a parent whose parental rights have been terminated to view that child's records or consent to their disclosure. It adds a child's current guardian *ad litem* (a person representing a child's best interests) to the list of authorized representatives thus giving him or her access to the child's records and authority to allow disclosure. Currently, only the child's attorney, parent, guardian, or conservator can authorize disclosure of the contents of the child's records.

New Mandatory Disclosures

Under the bill, DCF must disclose records without consent from the subject of the record (as opposed to current law, which requires consent from the person named in the record) to the following parties, who are not entitled to disclosure under current law:

1. the attorney general, any assistant attorney general, or other legal counsel retained to represent DCF in a legal proceeding involving DCF or one of its employees;
2. foster or prospective adoptive parents, but only records relating to social, medical, psychological, or educational needs of

- children currently placed with them or being considered for placement, and so long as no information that identifies biological parents is disclosed without the biological parents' consent;
3. employees of the Department of Mental Health and Addiction Services, for the purpose of treatment planning for young adults who have transitioned from DCF care, provided the information is limited to information obtained in abuse and neglect investigations or contained in the abuse registry;
 4. Superior Court judges in criminal prosecutions, for purposes of an *in camera* review if (a) the court has ordered that it be given the record or (b) a party to the proceeding has subpoenaed the record;
 5. Superior Court judges for determining the appropriate disposition of a child convicted as a delinquent or who is a member of a family with service needs;
 6. probate court judges in custody matters, provided only information necessary to prepare an investigative report is disclosed;
 7. the auditors of public accounts, as long as no information identifying the subject of the record is disclosed unless essential to an audit; and
 8. the Department of Developmental Services (DDS), for determining eligibility, facilitating enrollment, and planning services for a DDS client who is not participating in its voluntary services program. (DCF can disclose only a written summary of a child abuse or neglect investigation and information in its abuse registry.) The bill requires DDS to notify a child's parent or guardian that these records may be disclosed without their consent when they apply to place the child in DDS's voluntary services program or when the child's

annual individual plan is updated.

Under current law, disclosure to the state auditors, DDS, Superior Court judges determining the disposition of cases involving delinquents and children service needs, and the Attorney General's Office is at DCF's discretion and, in the latter situation is not permitted to outside counsel or for proceedings involving individual employees.

Revisions to Existing Mandatory Disclosures

The bill also limits some disclosures and the purposes for which parties currently entitled to receive mandatory disclosures can use them.

Records Pertaining to an Individual. Current law gives anyone, or his or her attorney or other authorized representative, access to records that pertain to or contain information about the person, including records concerning investigations and medical or psychiatric examinations. The DCF commissioner can refuse access if she determines it would not be in the person's best interests.

The bill instead requires limited disclosure to:

1. the person named in the record, or his or her representative;
2. the named person's minor child, if the person's parental rights have not been terminated;
3. information identifying someone who reported abuse or neglect of the person, if a court determines (a) there is reasonable cause to believe the reporter knowingly made a false report or (b) the interests of justice require disclosure.

DCF Employees. The bill broadens required disclosure to DCF employees by requiring it for any reason reasonably related to DCF's purposes. Current law restricts disclosure to DCF employees to the following situations: (1) the name of someone reporting abuse must be released to child protection and abuse registry personnel and (2) when a record would be necessary for an employee's disciplinary hearing or

an appeal from a hearing decision.

Prosecutors. The bill restricts prosecutors' access to delinquency records. As under current law, the bill gives prosecutors access to records only for investigating or prosecuting abuse and neglect. The bill gives them access to records concerning a delinquency defendant who is not charged with child abuse only (1) while the abuse case is being prosecuted and (2) after obtaining a release from the defendant.

Chief Child Protection Attorney. The bill removes the current restrictions on the chief child protection attorney's use of DCF records. Under current law, she has access only to ensure competent representation by the attorneys with whom she contracts for services and to ensure they are properly paid.

Legislative Committees. The bill adds the Human Services Committee to the legislative committees that must receive records in the course of their official functions. The Judiciary, Program Review, and Children's committees can already obtain records in this situation.

DMV. The bill requires disclosure to DMV of information obtained in child abuse investigations, in addition to the already required disclosure of information from the child abuse registry.

Law Enforcement Agencies. Current law does not limit the use a law enforcement agency can make of records DCF discloses to it. The bill specifies that disclosure is to officers, not the agency, and is just for investigating child abuse cases. It also specifies that disclosure for this purpose is required to both state and federal officers.

New Discretionary Disclosures

The bill (1) permits DCF to disclose records without consent from the record's subject to the following parties who do not currently have access to these records and (2) eliminates the requirement that DCF find disclosure is in the person's best interest:

1. DCF employees or former employees, or their authorized

representatives, for purposes of participating in any court, administrative, or disciplinary hearing, as long as DCF discloses only records it determines are relevant to the proceeding;

2. providers of professional services for children, youth (16- to 18-year-olds), and parents, provided disclosure is limited to information they need to provide services;
3. individuals or agencies under contract with DCF to identify and assess potential foster and adoptive parents, as long no information identifying a child's or youth's biological parent is disclosed without that parent's consent;
4. law enforcement agencies and prosecutors if there is reasonable cause to believe a child or youth is being, or is at risk of being, abused or neglected as a result of criminal activity;
5. anyone interviewed in a child abuse or neglect investigation who is not otherwise entitled to disclosure, as long as the information disclosed is limited to (a) the general nature of the allegations, (b) the identity of the alleged victim and the alleged perpetrator, (c) information in the abuse registry, and (d) information needed to effectively conduct the investigation;
6. individuals who are looking for a missing parent, child, or youth, provided the disclosure is limited to information that helps in the search;
7. a court of competent jurisdiction when a DCF employee is subpoenaed and ordered to testify about the records;
8. non-DCF employees who arrange, perform, or help perform functions on DCF's behalf such as data processing, aggregation, or analysis; utilization review; quality assurance; and practice management. DCF can disclose to these people only information it gathers in an abuse or neglect investigation or from the abuse registry.

Revisions to Existing Discretionary Disclosures

The bill makes discretionary some previously mandated disclosures, and changes some of the conditions for already discretionary disclosures.

Department of Social Services (DSS). Under current law, DCF must disclose records to DSS for its determining whether a person is suitable to receive DSS child care payments and may disclose them if needed to protect a child's health, safety, and welfare. Under the bill, any disclosure to DSS is subject to the laws governing abuse investigations and the child abuse registry, which generally prohibit (1) placing an individual's name on the registry or (2) disclosing information about an abuse report to anyone seeking information in conjunction with applications for employment, licensure, or reimbursement in a DSS-administered child care program until the suspect has exhausted or waived all administrative appeals.

Fatalities. The bill makes discretionary, rather than mandatory, DCF's disclosure of information about fatalities or near-fatalities resulting from abuse or neglect. It continues to limit such disclosures to general information that does not jeopardize a pending investigation.

Child Abuse Reporters. The bill permits people who report abuse or neglect to receive more information about the case. It permits them to get information from the abuse registry; they can already get information on the status of the investigation and a general description of any action DCF has taken.

Treatment Providers. The bill limits to information in the abuse registry, the records medical or mental health providers treating an abuser or someone who is unwilling to protect a child from abuse or neglect can obtain.

Out-of-State Agencies. Current law permits disclosure to any agency in another state that is responsible for investigating or protecting children from abuse and neglect, solely for the purpose of

investigating abuse. The bill specifies that DCF can give records to (1) out-of-state courts and federally recognized tribes and (2) agencies that provide services to families at risk for abuse or neglect. It also specifies that DCF can only give information obtained in an abuse investigation or in the abuse registry.

Researchers. The bill removes a requirement that requires each person identified in a record or his or her authorized representative consent in writing before DCF can disclose records to a researcher.

Confidentiality of Identity of Abuse or Neglect Reporter

The bill changes restrictions on DCF's disclosing the name of a person who reports abuse or neglect. It does this by applying to abuse reporters the confidentiality requirements that currently apply to people who cooperate with abuse and neglect investigations.

Currently, DCF cannot disclose the name of an abuse reporter without the person's written consent except to:

1. a DCF employee responsible for child protective services or the abuse registry;
2. a law enforcement officer, an appropriate state's attorney, or assistant attorney general;
3. a Superior Court judge and all necessary parties in abuse and neglect proceedings or a criminal prosecution involving abuse or neglect; or
4. a state child care licensing agency, executive director of any institution, school, or facility, or superintendent of schools.

The bill permits (1) an abuse reporter to request confidentiality or (2) DCF to determine that disclosing the reporter's name might be detrimental to her or his safety or interests. But it requires DCF to disclose the reporter's name (and the name of people who cooperate with an investigation) to:

1. a DCF employee for reasons reasonably related to DCF business;
2. a law enforcement officer or a state's attorney for purposes of investigating or prosecuting abuse or neglect;
3. an assistant attorney general representing DCF;
4. a Superior Court judge and all necessary parties in abuse and neglect proceedings or a criminal prosecution involving abuse or neglect; or
5. a state child care licensing agency, executive director of any institution, school, or facility, or superintendent of schools.

As under current law, information identifying someone who reports abuse or neglect cannot be disclosed to the person named in the record or his or her representative unless a Superior Court judge finds, after reviewing the records, that the reporter knowingly made a false report or the interests of justice require disclosure.

Changes in Disclosure Procedures

Denying Access to Records. Under current law, the DCF commissioner can refuse to disclose a record to the person who is its subject when she determines that disclosure is not in the person's (or representative's) best interests, so long as she gives her reasons in writing and advises the person that he or she may challenge this action in court. Under the bill, her authority to refuse to disclose extends to anyone who asks for information, and the basis for refusal is no longer restricted to considerations of the requestor's best interests. When she refuses a request, the bill requires her to notify the requestor of the general nature of the records being withheld, in addition to providing her reasons and notice of judicial review options.

The bill also expands the reasons courts may use to uphold DCF's non-disclosure decisions. Currently, after a hearing and private review of the challenged records, the court must order disclosure unless it

determines this could be contrary to the requestor or requestor representative's best interests. Under the bill, the court may also uphold DCF's decision when it determines that disclosure (1) would be contrary to the best interests of the person who is the subject of the record, (2) could reasonably result in the risk of harm to any person, or (3) would contravene the state's public policy.

Disclosure in Custody Matters. Currently, DCF records must be disclosed to parties in custody matters involving abuse or neglect allegations. Under the bill, disclosure must be made to probate court judges who have asked DCF to write an investigative report for the purpose of determining custody. Disclosure is limited to records necessary to prepare the report.

Further Disclosure of Record. Current law prohibits information that is disclosed from a person's record from being further disclosed without consent unless it is disclosed pursuant to an order issued by a court in which a criminal prosecution or an abuse, neglect, commitment, or termination of parental rights proceeding involving the record's subject is pending. The bill permits further disclosure based on an order issued by any court of competent jurisdiction.

The bill permits parties to civil litigation to petition the juvenile court for an order authorizing disclosure to other parties in the litigation. The court can grant the order after reviewing the records in question and determining that the records are material and relevant and that good cause for disclosure exists. It specifies that "good cause" includes situations in which the party seeking the record has no other available means of obtaining the information.

COMMITTEE ACTION

Human Services Committee

Joint Favorable Substitute

Yea 19 Nay 0 (03/23/2010)